IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Writ Petition No.8266 of 2006

Smt.Kavita Harishchandra Vete & anr. Petitioners
Vs.
Mr.Jayprakash Shrivastav Respondent

Mr.K.N.Kore for petitioners.
Mr.Akhilesh Singh for respondent nos.1 and 2.

CORAM: B.H.MARLAPALLE, J.

April 21, 2007.

P.C.

. Heard Mr.Kore, the learned counsel for the petitioners and Mr.Akhilesh Singh for the respondent nos.1 and 2. This petition filed under Article 227 of the Constitution arises from the decree of eviction passed by the Competent Authority, Konkan Division, Mumbai in Case No.50 of 2005.

. The present petitioners had entered into an agreement for development of their property i.e. plot of land bearing Survey No.60, Hissa No.2 (Part) of Kalyan, Dist. Thane and admeasuring about 1033.44 sq.mtrs. within the limits of Kalyan Dombivli Municipal Corporation, on 20/9/2001 and as per the said agreement the developers were required to provide to the petitioners a rent free suitable residential accommodation till the building to be

constructed as per the development agreement was ready and the petitioners would occupy their residential dwelling in the said building. Accordingly the respondent nos.3 and 4, the developers have in turn taken on leave and licence basis from the respondent nos.1 and 2 the suit flat viz. Flat No.1, Ground Floor, Metro Co-op. Hsg. Soc.Ltd., Golden Park, Beturkar Pada, Kalyan (West) and the monthly consideration fixed was Rs.2200/-. The petitioners occupied the said flat with effect from 30th June 2002 to 31/12/2002. The landlords claimed that the licence fees payment was defaulted and after the expiry of the licence period, the suit flat was not vacated and, therefore, they made demand of possession of the same through an Advocate's notice dated 2/7/2003. The notice was addressed to the petitioners as well as the respondent nos.3 and 4 and it was also pointed out that the arrears of licence fees were to the tune of Rs.94,600/-. The notice was replied on 9/7/2003 and the petitioners and the respondent nos.3 and 4 denied to hand over the vacant and peaceful possession of the suit premises. The landlords i.e. the respondent nos.1 and 2, therefore, filed Eviction Case No.50 of 2005 under Section 24 of the Maharashtra Rent Control Act,

1999 ("the Act" for short) before the Competent Authority, Konkan Division, Mumbai under the said Act praying for a decree of eviction. On receiving the notices the present respondent nos.3 and 4 filed an application for leave to defend the said application. After hearing the parties to the proceedings, the application was allowed by the Competent Authority on 22/3/2006. The present petitioners also field their written statement before the Competent Authority and it was alleged that the landlords were guilty of making illegal attempts to evict them from the premises and police complaint came to be filed on 22/12/2005. Petitioners also filed RCS No.529 of 2005 before the learned Civil Judge, Junior Division at Kalyan on 23/12/2005. On the application filed at Exhibit 5 in the said suit, the order of status quo was passed and it was extended. So far as the payment of licence fees is concerned, the petitioners contended that it was the responsibility of the respondent nos.3 and 4 - developers. Taking into consideration the averments of the respective parties, the competent authority framed the following issues by his order dated 25/4/2006 :

(1) Does the applicant prove that he is

licensor and respondents No.1 and 2 are licensees in respect of suit premises?

(2) Does the applicant prove that license period has expired and he is entitled to recover the possession of the suit premises?

(3) Does the applicant prove that he is entitled to relief sought?

(4) Does the respondents No.1 and 2 prove that they are in possession of suit premises in a capacity other than licensee?

(5) Whether this Court has jurisdiction?

. The applicants-landlords examined PW 1 - J.P. Srivastava and the respondents in the proceedings examined DW 1 - Kavita Harishchandra Vete, the present petitioner no.1. The competent authority after hearing all the parties concerned and assessing the evidence adduced by them recorded a finding that the applicants - landlords had successfully discharged the burden and proved the licensor/licensee relationship between the parties

and, therefore, the application was required to be allowed. Consequently the following order was passed by the competent authority on 24/11/2006:

> "1. Respondent No.1 and 2 are hereby directed to hand over the vacant and peaceful possession of suit premises i.e. flat No.1, ground floor, Metro Co-op. Hsg. Soc. Ltd., Golden Park, Beturkar Pada, Kalyan (W), Dist. Thane, to the applicant.
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> 2. The Respondents are directed to pay the arrears of compensation of Rs.27,400/- and arrears of maintenance of Rs.13,100/- to the applicant.
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> 3. The Respondents are directed to pay the damages at the rate of Rs.2200/- per month from 2.7.2003 to till handing over of possession of suit premises to the applicants."

. Though this order could have been challenged by filing a revision application under Section 44 of the Act, recourse to such a remedy has not been

resorted to and this petition has been filed directly. It is a well settled position in law that if a statutory remedy of revision is available to an aggrieved party, a writ petition by the said party is not to be entertained and the party is required to be relegated to file a revision application. However, by pointing out to the reasoning set out by the competent authority in the impugned order dated 24/11/2006 and the letter dated 20/5/2004 addressed by the respondent nos.3 and 4 to the present petitioners, it was made clear that the petitioners were required to enforce their right and get a rent free residential accommodation as per the development agreement from the respondent nos.3 and 4 and they could not make the landlords suffer and if the developer was in default in paying the licence fees, the decree of eviction by way of summary proceedings under Section 24 of the said Act would follow, the learned counsel for the petitioners requested for some time to vacate and hand over the premises to the landlords. This was a reasonable request made rather than resorting to the alternative remedy of filing a revision before the competent authority. The learned counsel for the landlords was not in favour of granting any further time to vacate the suit flat.

In any case, by the time the petitioners enforce their rights against the developers and obtain a suitable residential accommodation from the developers or on their own, some time is required to be granted to them to vacate the suit flat.

. Hence the writ petition is disposed off by granting four weeks' time to the petitioners to vacate and hand over the suit flat to the landlords i.e. respondent nos.1 and 2 herein and subject to the condition that an undertaking to this effect shall be filed by the petitioners before the competent authority on or before 24th April 2007. Undoubtedly, the respondents before the Competent Authority shall be liable to remit the arrears in licence fees as directed by the competent authority.

. Certified copy be issued on priority. Writ to go to the competent authority forthwith.

(B.H.MARL